IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Arbitration Petition No. 219 of 2007

M/s Thakkar and Associates ..Petitioner

vs.

Union of India and another ..Respondent

Mr.P.K.Dhakephalkar, Sr.Advocate i/b
Mr.V.R.Hukmani for petitioner.
Mr.T.J.Pandian for respondent no.1

CORAM: S.C.DHARMADHIKARI J
7th September,2007

P.C.

1. Heard Mr.Dhakephalkar, Senior Counsel for the petitioners and Mr.Pandian for respondent no.1.

2. In the submission of Mr.Dhakephalkar, the award is vitiated on the face of it because the Arbitrator failed to notice that the petitioners had first forwarded the claim for adjudication to the Arbitral Tribunal. However, the claim was revised to the knowledge of the respondent and that of the Tribunal. Even during the course of reference, the submissions were canvassed and material produced with regard to the modified claim. In such circumstances, failure on the part of the Arbitral Tribunal to consider the modified claim vitiates the entire award. In all fairness Mr.Dhakephalkar states that the petitioners are ready and willing to go before the same Tribunal

and have the reference adjudicated expeditiously.

3. Mr.Pandian appearing for the respondent could not dispute the above fact in as much as the grounds mentioned in the petition have not been controverted. In fact, Mr.Pandian consented to the award being set aside on this ground alone.

4. Accordingly, by consent of parties, award dated 5th March, 2007 impugned in this petition is quashed and set aside.

5. Mr.Pandian states that a panel containing the names of Arbitrators would be forwarded to the petitioners within a period of six weeks from today. The petitioners to give their consent with regard to the appointment of 3 Arbitrators from the said panel. Accordingly, the Union of India would constitute the Arbitral Tribunal through the subject department, namely, General Manager, Central Railways and inform the petitioners of such constitution. Thereafter the Arbitral Tribunal shall post the reference for de novo adjudication.

6. Mr.Dhakephalkar states that within two weeks from the date of receipt of list of names of the Arbitrators, the petitioners would forward their consent with regard to the appointment of

Arbitrators. The petition is allowed with the above directions. No order as to costs.

7. Needless to state that the Court has not gone into the merits of the claim nor has adjudicated upon the rival contentions in that behalf. The same are expressly kept open for being raised by both sides.

(S.C.DHARMADHIKARI J.)